

**BEFORE THE INDIANA
BOARD OF SPECIAL EDUCATION APPEALS**

*In the Matter of L.T. and the Indianapolis)
Public Schools)* **Article 7 Hearing No. 1147-00**

The parent's request for hearing was received by the Division of Special Education, Indiana Department of Education, on February 4, 2000. The Independent Hearing Officer (IHO) was appointed on February 7, 2000. On February 11, 2000, the IHO notified the parties that a prehearing conference would be held on February 16, 2000. Both parties were represented by counsel. The parties discussed the issues, agreed to convene a case conference, asked for a continuance and agreed to waive the 45-day decision deadline. The IHO issued a written order, dated February 22, 2000, setting the hearing for March 28 & 29, 2000, with a second prehearing conference scheduled for March 8, 2000, and the decision to be rendered by April 10, 2000.

A prehearing order was issued on March 9, 2000. The issues for hearing were identified as :

- a) Whether the school has failed to provide the modification, adaptations, and assistance of a special education teacher with the student's general education teachers in accordance with the student's I.E.P.'s during the 1997-98, 1998-99, and 1999-2000 school years.
- b) Whether the school has failed to provide the student with a free and appropriate education (FAPE) by failing to involve general education teachers in the development of the I.E.P. during the 1997-98, 1998-99, and 1999-2000 school years.
- c) Whether the school has failed to provide the student with a FAPE by not informing the student's regular education teachers of the student's special education needs or the student's limitations.
- d) Whether the school failed to give the parent notice of a case conference committee meeting on November 26, 1997.
- e) Whether the school failed to obtain parental consent prior to making change of placements during the 1997-98, 1998-99, and 1999-2000 school years.
- f) Whether the school failed to follow proper evaluation procedures during the 1997-98, 1998-99, and 1999-2000 school years.

Issue (f) was withdrawn by the parent at the conclusion of the due process hearing.

The parent, through her attorney, requested a continuance, which was granted by order dated March 17, 2000. The parties jointly requested an additional continuance, which was granted by order dated April 12, 2000. The hearing was scheduled for June 1 & 2, 2000. On May 24, 2000, the school filed a motion to dismiss, which was heard and denied by the IHO prior to the start of the hearing.

The School's exhibits 1-30 were admitted by stipulation of the parties. The parent's exhibits were admitted (unless withdrawn), except for a letter dated February 9, 1999, which was not disclosed in accordance with the 5-day discovery rule. The witnesses were separated and the hearing was closed. The Student attended the due process hearing.

The IHO issued his written decision on June 29, 2000. From the testimony and evidence presented at the hearing, the IHO determined fifty-six (56) Findings of Fact and reached five (5) Conclusions of Law from which he issued one (1) Order.

The IHO's Findings of Fact

The Student is eighteen (18) years old and is eligible for special education as a student with a learning disability (LD). The Student was initially identified as an L.D. student when she was in the 6th grade. The Student functions in the average range of intelligence. Math, self-motivation, study skills and work completion were noted by the multidisciplinary evaluation team to be weaknesses of the Student. A case conference report dated April 11, 1996 (8th grade) indicated the Student displayed a lack of interest in academics.

The Student attended Broad Ripple High School (an Indianapolis Public Schools' (IPS) school) during the first semester of her freshman year (1996-97), failing all subjects. The parent denies the grade transcript accurately reflects the Student's grades at Broad Ripple, and claims the school made serious attendance-keeping errors in showing the Student had a total of 57 unexcused absences (across several subjects) during the first semester. The parent claims the Student is entitled to waivers for most of the absences, but school records do not reflect that any absences were waived. The Student attended Gary Roosevelt High School for the second semester of her freshman year, receiving no special education services. She passed 4 out of 6 classes.

The Student returned to IPS for tenth grade and began the 1997-98 school year at Arlington High School. The School did not learn that the Student was a special education student until after school started. No documentation or information from the mother or the Gary Community School Corporation was provided the School. When the School learned the Student had been receiving special education services, it conducted a case conference committee meeting on November 26, 1997. The parent claims she was not notified of this meeting, but her own evidence indicates otherwise. The School talked to the parent by phone, and she agreed to no changes in the program for the Student. The case conference report with IEP goals does not list any classroom modifications or adaptations for the Student. As early as 1996, the parent maintained that the Student was not benefitting from

placement in a resource room. The Student passed 4 classes and failed 3 during the fall semester, 1997.

The School implemented the 1997-98 IEP and placed the Student in all general education classes with "direct service instruction resource." The Student was enrolled in resource room for 49 minutes-per-day during the spring semester, 1998 (2nd semester of 10th grade). The Student received 5 F's, 1 D, and 1 C during the spring semester of grade 10. During this semester the resource teacher contacted the general education teachers and received feedback from them concerning the Student. The resource teacher tried to motivate the Student, but the Student seldom brought schoolwork to the resource room. During 10th grade the Student accumulated 162 unexcused absences (class absences). Both the parent and Student think her attendance was fair to good. The Student was a cheerleader during 10th grade, but was dropped from the squad because of poor grades.

Two days before the fall, 1998 (11th grade) semester began, the mother spoke with the resource teacher and asked that the Student not attend resource room. The mother contended the Student did not benefit from attending a resource room. A conference was held on October 20, 1998, that was adjourned until a re-evaluation was conducted on the Student. A discussion took place reflecting the fact the Student was not to be enrolled in resource room at that time. Also in October, 1998, the parent was contacted by teachers concerning the Student's excessive absences and tardiness.

After a lengthy discussion in January, 1999, (spring semester 11th grade) the case conference committee placed the Student back into a resource room to provide the Student with daily contact with a resource teacher. The case conference committee placed the Student in general education for the entire instructional day with individualized services provided for part of the day in the general education classroom. School personnel discussed the fact the Student was not motivated to complete work. Adaptations to the general education curriculum included extra time for tests if needed, use of a calculator, study guides and use of a computer. The Student's English teacher attended the January 20, 1999, case conference committee meeting. Although the Student was enrolled in a resource room during the spring, 1999, semester, she didn't go to the class at the beginning of the semester until the resource teacher called the parent. The principal was provided feedback from teachers that indicated the January, 1999, IEP adaptations were being implemented from January, 1999, until present.

The Student failed 5 classes and received one D and one C during the fall, 1998, semester. During the spring semester, the Student received 2 F's, 3 D's, and 2 C's. The Student had 116 unexcused absences from class during her junior year. At the end of her junior year, she had 16½ credits towards graduation. Thirty-eight (38) credits are needed to graduate.

On several occasions the parent told school personnel she did not want the Student in a resource room. The Student did not take advantage of assistance that was available in the resource class until the spring, 2000, semester. The parent did not express any concern to school personnel over the fact the Student was not enrolled in a resource class in the fall of 1999.

A case conference committee meeting was held on February 24, 2000. The Student and parent

reluctantly agreed to a resource class. One of the Student's general education teachers was present at the meeting. The case conference committee discussed a plan of classes and services that would allow the Student to earn enough credits to graduate with a diploma. After school classes provided with a 1:1 teacher as well as a summer, 2000, program with day adult classes were discussed. The committee also recommended supervised Student use of an assignment notebook and a weekly report from teachers sent to the parent. The committee also agreed that each night the Student would be supervised by the parent at a study table. Homebound supplemental services were agreed upon in order for the Student to gain the 38 credits needed for graduation. The Student has passed the English/language arts portion of the Graduation Qualifying Examination (GQE) but has not passed the mathematics portion of the GQE.

The parent was upset the Student would not be able to participate in the commencement ceremony. At a May, 2000, case conference, the parent requested the Student be transferred from the diploma track to a certificate of completion program so she could go through the commencement program. The case conference committee denied this request since the Student had been on a diploma track since the beginning of high school.

Although not all of the Student's teachers were provided with copies of the Student's IEP at the start of the school year, the Student's teachers provided adaptations in the classroom and allowed the Student additional time to complete homework and classroom assignments. The Student frequently cut classes and failed to turn in assignments. The Student said she only made up 30% of the homework she missed when absent (unexcused) from class. The Student had 57 unexcused absences from classes and 14 tardies during the fall, 1999, semester. The Student received 5 F's and one C for the first semester of her senior year.

The IHO's Conclusions of Law

Based on the foregoing, the IHO concluded the School has provided the modifications, adaptations, and assistance of a special education teacher with the Student's general education teachers in accordance with the Student's IEP's during the 1997-98, 1998-99, and 1999-2000 school years. The School has not failed to provide the Student with a FAPE by failing to involve general education teachers in the development of the IEP during the 1997-98, 1998-99, and 1999-2000 school years.

The School has not failed to provide the Student with FAPE by not informing the teachers of the Student's special education needs or the Student's limitations. Any deficiency regarding a lack of knowledge about the Student's disability was cured by teachers providing modifications and adaptations or did not amount to a denial of FAPE. The Student did not do well because she was absent so much and did not do her schoolwork.

The School provided the parent with notice of the case conference committee meeting on November 26, 1997. The School did not fail to obtain parental consent prior to making change of placements during the 1997-98, 1998-99, and 1999-2000 school years. The parent requested the Student not be enrolled in resource room in the fall of 1998 and 1999. Any procedural error did not deny the parent

participation in the IEP process nor did it deny the Student a FAPE.

The IHO's Order

The IHO issued one order:

The School continues to offer the Student a FAPE as contemplated by the February 24, 2000, case conference report and IEP.

Procedural History of the Appeal

On July 28, 2000, the parent filed her Petition for Review. That same day, the parent also submitted an Addendum to Issue # 4. On August 7, 2000, the School, by counsel, requested an extension of time in which to file its reply. The Board of Special Education Appeals (BSEA) granted this request on August 8, 2000, such that the School's reply was due to be filed on or before August 17, 2000. The School's Reply was timely filed on August 17, 2000.

Parent's Petition for Review

The Parent, in her Petition for Review, takes exception to conclusions of law numbers 1, 3, 4, and 5 (all except number 2).¹ The petition does not specifically identify the findings of fact to which exception is taken, but generally argues that the findings of fact which support the conclusions of law are not supported by substantial evidence. In the addendum, the Parent specifically takes exception to the following findings of fact as not being supported by substantial evidence: Findings of Fact Nos. 9, 10, 12, 13, 14, 18, 21, 23, 24, 25, 27, 31, 32, 35, 37, 39, 41, 46, 47, and 49.

School's Reply to Petition for Review

In its Reply, the School notes that the Parent objects to nearly every finding of fact and conclusion of law. The School's reply responds to each area of objection with reference to the testimony or exhibits supporting the IHO's determination. The School maintains the IHO's decision is supported by substantial evidence and should be upheld in its entirety.

REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS

¹Conclusion of Law No. 2 determined the School did not fail to provide the Student with a FAPE by failing to involve general education teachers in the development of the IEP during the 1997-98, 1998-99, and 1999-2000 school years.

The Indiana Board of Special Education Appeals met on September 5, 2000, to conduct its review of the above-referenced matter without oral argument. All three members were present and had reviewed the record, the petition for review, and reply. The Indiana Board of Special Education Appeals now finds as follows:

Combined Findings of Fact and Conclusions of Law

1. The Indiana Board of Special Education Appeals is the entity of the State authorized to review the decisions of Independent Hearing Officers appointed pursuant to 511 IAC 7-30-3. The Indiana Board of Special Education Appeals (BSEA) has jurisdiction in the matter pursuant to 511 IAC 7-30-4.
2. The parent objects to Conclusions of Law Nos. 1, 3, 4, and 5 as determined by the IHO. The basis of the Parent's objections are a disagreement with the underlying findings of fact as determined by the IHO which support the conclusions of law. The parent specifically objected to the IHO's Findings of Fact Nos. 9, 10, 12, 13, 14, 18, 21, 23, 24, 25, 27, 31, 32, 35, 37, 39, 41, 46, 47, and 49. In essence, the parent argues the findings of fact and conclusions of law are not supported by substantial evidence.
3. The BSEA is charged with reviewing the entire record of the due process hearing to ensure the procedures of the hearing were consistent with 511 IAC 7-30-3.
4. The BSEA shall not disturb the findings of fact, conclusions of law, or orders of the IHO unless the BSEA finds the IHO's decision to be:
 - a. arbitrary or capricious.
 - b. an abuse of discretion.
 - c. contrary to law, contrary to a constitutional right, power, privilege, or immunity.
 - d. in excess of the jurisdiction of the IHO.
 - e. reached in violation of an established procedure.
 - f. unsupported by substantial evidence.511 IAC 7-30-4(j).
5. The IHO's findings of fact are supported by substantial evidence.
6. The School has provided the modifications, adaptations, and assistance of a special education teacher with the Student's general education teachers in accordance with the Student's IEP's during the 1997-98, 1998-99, and 1999-2000 school years. (Conclusion of Law No. 1).
7. The School has not failed to provide the Student with FAPE by not informing the Student's general education teachers of the Student's special education needs or the Student's limitations. (Conclusion of Law No. 3).

8. The School provided the parent with notice of the case conference committee meeting on November 26, 1997. (Conclusion of Law No. 4).
9. The School did not fail to obtain parental consent prior to making change of placements during the 1997-98, 1998-99, and 1999-2000 school years. (Conclusion of Law No. 5).
10. Any procedural defect or deficiency on the part of the School did not result in the denial of a FAPE. The evidence established that the Student's excessive absences, tardies, and failure to do her homework were the primary causes of her failure to pass her courses and earn enough credits to graduate with her class.
11. Conclusions of Law Nos. 1, 3, 4 and 5 are not contrary to law and are supported by substantial evidence.
12. The procedures of the hearing were consistent with 511 IAC 7-30-3.

ORDERS

1. The IHO's decision is affirmed.
2. The School continues to offer the Student a FAPE as contemplated by the February 24, 2000, case conference report and IEP.

All other Motions not specifically addressed herein are hereby deemed denied.

Date: September 5, 2000

/s/ Cynthia Dewes
Cynthia Dewes, Chair
Board of Special Education Appeals

Appeal Right

Any party aggrieved by the written decision of the Indiana Board of Special Education Appeals has thirty (30) calendar days from receipt of this decision to request judicial appeal from a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5 and 511 IAC 7-15-6(p).